

AMENDED IN ASSEMBLY MARCH 11, 2008

CALIFORNIA LEGISLATURE—2007–08 REGULAR SESSION

**ASSEMBLY BILL**

**No. 1880**

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**Introduced by Assembly Member Tran**

February 4, 2008

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An act to amend Section 2320 of the Probate Code, relating to guardians and conservators, and declaring the urgency thereof, to take effect immediately.

LEGISLATIVE COUNSEL'S DIGEST

AB 1880, as amended, Tran. Guardians and conservators: bonds.

Existing law requires every person appointed as a guardian or conservator to post a bond approved by the court before a letter of guardianship or conservatorship is issued. Existing law provides that attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or her duties shall be a surcharge against the conservator or guardian and, if unpaid, shall be recovered against the surety on the bond.

This bill would require a guardian or conservator to post a separate recovery bond for the benefit of the ward or conservatee and any person interested in the guardianship or conservatorship estate who may bring a surcharge action against the guardian or conservator for breach of his or her duty. The bill would require the recovery bond to be given by an admitted insurer for the recovery of reasonable attorney's fees and costs as approved by a court in a successful surcharge action. *The bill would expressly provide that these fees and costs shall be recovered against the surety on the recovery bond only and not against the guardian's or conservator's bond.* The bill would require that the amount of the bond be calculated in reference to a specific court rule.

This bill would declare that it is to take effect immediately as an urgency statute.

Vote:  $\frac{2}{3}$ . Appropriation: no. Fiscal committee: no.  
State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 2320 of the Probate Code is amended to  
2 read:

3 2320. (a) Except as otherwise provided by statute, every person  
4 appointed as guardian or conservator shall, before letters are issued,  
5 give a guardian's or conservator's bond and a related recovery  
6 bond approved by the court.

7 (b) The guardian's or conservator's bond shall be for the benefit  
8 of the ward or conservatee and all persons interested in the  
9 guardianship or conservatorship estate and shall be conditioned  
10 upon the faithful execution of the duties of the office, according  
11 to law, by the guardian or conservator. The recovery bond shall  
12 be for the benefit of the ward or conservatee and any person  
13 interested in the guardianship or conservatorship estate who may  
14 bring a surcharge action against the guardian or conservator for  
15 breach of his or her duty under this code.

16 (c) Except as otherwise provided by statute, unless the court  
17 increases or decreases the amount upon a showing of good cause,  
18 the amount of a guardian's or conservator's bond given by an  
19 admitted surety insurer shall be the sum of paragraphs (1) to (3),  
20 inclusive, and the recovery bond shall conform to the requirements  
21 of paragraph (4).

22 (1) The value of the personal property of the estate.

23 (2) The probable annual gross income of all of the property of  
24 the estate.

25 (3) The sum of the probable annual gross payments from the  
26 following:

27 (A) Part 3 (commencing with Section 11000) of, Part 4  
28 (commencing with Section 16000) of, or Part 5 (commencing with  
29 Section 17000) of, Division 9 of the Welfare and Institutions Code.

30 (B) Subchapter II (commencing with Section 401) of, or Part  
31 A of Subchapter XVI (commencing with Section 1382) of, Chapter  
32 7 of Title 42 of the United States Code.

33 (C) Any other public entitlements of the ward or conservatee.

(4) The recovery bond shall be given by an admitted insurer for the recovery of reasonable attorney's fees and costs as approved by a court in a successful surcharge action. The attorney's fees and costs incurred in a successful action for surcharge against a conservator or guardian for breach of his or her duty under this code shall be a surcharge against the conservator or guardian and, if unpaid, shall be recovered against the surety on the *recovery bond only. The fees and costs shall not be recoverable against the guardian's or conservator's bond.* Except as otherwise provided by statute, unless the court increases or decreases the amount upon a showing of good cause, the amount of the recovery bond shall be calculated as provided in Rule 7.207 of the California Rules of Court.

(d) If the bond is given by personal sureties, the amount of the bond shall be twice the amount required for a bond given by an admitted surety insurer.

(e) The Bond and Undertaking Law (Chapter 2 (commencing with Section 995.010) of Title 14 of Part 2 of the Code of Civil Procedure) applies to a bond given under this article, except to the extent inconsistent with this article.

SEC. 2. This act is an urgency statute necessary for the immediate preservation of the public peace, health, or safety within the meaning of Article IV of the Constitution and shall go into immediate effect. The facts constituting the necessity are:

In order to create a separate recovery bond to facilitate compliance with Rule 7.207 of the California Rules of Court as soon as possible, it is necessary that this act take effect immediately.